United States Department of Labor
Employees' Compensation Appeals Board

W.M., Appellant	)	
and	)	**Docket No. 19-0013**
	)	**Issued: April 11, 2019**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF PRISONS, Tucson, AZ, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 1, 2018 appellant filed a timely appeal from an April 26, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a back condition causally related to the accepted January 10, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On February 9, 2018 appellant, then a 45-year-old correctional systems officer, filed a traumatic injury claim (Form CA-1) alleging that he injured his back when sorting, inspecting, and moving mail on January 10, 2018 while in the performance of duty. Specifically, he indicated that he injured himself while picking up a heavy mail bin, turning to avoid tripping over another mail bin, and stepping and twisting to the left in the same motion. On the reverse side of the claim form the employing establishment indicated that appellant was injured in the performance of duty and that he stopped work on January 11, 2018.

In a work excuse note dated January 10, 2018, Dr. James E. Tooley, Board-certified in family medicine and osteopathic manipulative therapy, indicated that appellant was able to return to work on January 13, 2018. In a separate work excuse note dated January 16, 2018, he noted that appellant could return to work on January 18, 2018 with restrictions.

In a report dated February 6, 2018, Dr. Jeffrey Baron, Board-certified in orthopedic surgery, diagnosed low back pain and lumbar radiculopathy. He referred appellant for physical therapy.

In a development letter dated March 21, 2018, OWCP advised appellant that the evidence of record was insufficient to establish his claim. It requested additional medical evidence as the evidence of record did not provide a diagnosis of a medical condition nor a physician's opinion as to how the alleged incident resulted in a diagnosed condition. OWCP afforded appellant 30 days to submit the requested evidence. No additional evidence was submitted.

By decision dated April 26, 2018, OWCP denied appellant's claim. It found that the evidence of record was insufficient to establish that his condition was causally related to the accepted January 10, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one

[3] *Supra* note 1.

[4] *D.K.*, Docket No. 17-1186 (issued June 11, 2018); *Gary J. Watling*, 52 ECAB 278 (2001).

[5] *T.C.*, Docket No. 18-1498 (issued February 13, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted January 10, 2018 employment incident.

Dr. Tooley initially treated appellant following the January 10, 2018 employment incident. While he provided medical restrictions, he offered no history of the employment incident, no diagnosis, and no offered opinion regarding causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[8] As Dr. Tooley's reports are deficient in this regard, his reports are of no probative value.

Appellant submitted a report from Dr. Baron dated February 6, 2018 in which he diagnosed low back pain and lumbar radiculopathy. The Board notes that the assessment of pain is not considered a diagnosis as it merely refers to symptoms of the underlying condition.[9] While Dr. Baron also diagnosed lumbar radiculopathy, he offered no opinion regarding the cause of this diagnosis. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[10] To be of probative medical value, a medical opinion must explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions.[11]

[6] *D.K.*, *supra* note 4; *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *T.C.*, *supra* note 5; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[9] *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[10] *C.C.*, Docket No. 17-1841 (issued December 6, 2018); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] *See K.L.*, Docket No. 18-1029 (issued January 9, 2019).

As appellant has not submitted rationalized medical evidence establishing that his diagnosed medical condition was causally related to the accepted employment incident, the Board finds that he has not met his burden of proof to establish his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted January 10, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 11, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board